HIGH COURT OF JAMMU AND KASHMIR AT JAMMU:

OWP no. 449/2002 & CMP 462/2002

Date of Decision: 27.04.2007

Madan Lal & Ors **vs** **State of J&K and ors**

Coram:

Mr. Justice J.P. Singh, Judge

Appearing counsel:

For the Petitioners : Mr. B. L. Kalgotra, Advocate.

For the respondents : M/S A. H. Qazi, A. A. G and Mr. A. V. Gupta, Sr. Advocate.

i) Whether to be reported in Press/Journal/Media: **Yes/No**

ii) Whether to be reported in Digest/Journal:

Revenue Minister's order, passed on the complaint of 5th and 6th respondents, directing respondents no. 3 and 4 to enquire into the Permanent Resident Certificates of the petitioners, has been questioned by the petitioners in the petition.

Petitioners say that 5th and 6th respondents had connived with 3rd and 4th respondents for a report against them regarding their Permanent Resident Certificates, and it was on their suggestions that the Minister had directed the 3rd and 4th respondents to enquire into the complaint of the 5th and 6th respondents.

Jurisdiction of the Revenue Minister to exercise powers of Revision under section 6 of the Jammu and Kashmir Grant of Permanent Resident Certificate (Procedure) Act, 1963, has been questioned on the

ground that the power of revision lies with the 'government' and not with the 'Revenue Minister'.

Respondents no. 5 and 6 contest the maintainability of the writ petition, saying that no adverse order having been passed against the petitioners, they had no occasion to invoke the writ jurisdiction of the Court. Saying that petitioner's father was a resident of village Khadgal Tehsil Shakkargar, now in Pakistan, who, on his migration to India in 1947, has settled in village Ladha, Tehsil Gurdaspur in the State of Punjab and had got a claim in lieu of the property left by him in Pakistan, the respondents say that the petitioners had illegally obtained Permanent Resident Certificates, which were required to be cancelled.

Mr. B. L. Kalgotra, learned counsel for the petitioners, says that expression 'government' appearing in Section 6 of the Jammu and Kashmir Grant of Permanent Resident Certificate (Procedure) Act, 1963, would not mean a Minister in the government and thus the order of the Minister, requiring respondents no. 3 and 4 to enquire into the matter, was without jurisdiction.

I do not find any substance in the submission of learned counsel for the petitioners because perusal of the rules framed by the government in exercise of its powers under section 9 of the Jammu and Kashmir Grant of Permanent Resident Certificate (Procedure) Act, 1963, reveals that the Revisions under Section 6 of the Act are required to be heard by the Revenue Minister. There being no challenge to the rules framed by the government under the Jammu and Kashmir Grant of Permanent

Resident Certificate (Procedure) Act, 1963, the submission of learned counsel becomes untenable. It is accordingly rejected.

I find sufficient force in the submission of learned counsel for the respondents that the petitioners had no occasion to approach this Court because no adverse finding has yet been recorded against the petitioners by respondents no. 3 and 4 and neither has any adverse order been passed against them by the Revenue Minister. The petitioners appear to have approached this Court only with a view to stall the enquiry into the complaint of respondents no. 5 and 6.

I do not find any merit in yet another submission of Mr. Kalgotra that the Revenue Minister had no jurisdiction to direct enquiry into the complaint of respondents no. 5 and 6 for the simple reason that the contours and reach of section 6 and the phraseology employed in the section do not, in any way, limit, the otherwise wide and plenary jurisdiction, which the Legislature has vested in terms of Section 6 of the Act in the Revisional authority. The expressions ‘ may pass any other orders or any directions as it may deem fit’ appearing in Section 6 demonstrate vesting of wide powers in the Revisional authority, including those to get the complaint enquired into by any agency or officer before passing final orders in exercise of Revisional jurisdiction, while looking at the correctness, genuineness, validity or otherwise of a Permanent Resident Certificate, either *suo moto* or on an application made to it in this behalf.

I, therefore, find no fault in the order stated to have been passed by the Revenue Minister, directing respondents no. 3 and 4 to enquire

into the complaint of respondents no. 5 and 6 regarding the Permanent Resident Certificates of the petitioners.

I, however, do nor see any justification in Revenue Minister's directing officers lower in rank and status to that of the Deputy Commissioner, who had issued the certificates to the petitioners, to enquire into the matter for submitting their report to the Revenue Minister, because the officers who are lower in status to the officer who had issued the certificates in question, would always remain under psychological pressure while conducting enquiry into the matter and a fair, impartial and meaningful enquiry may not be possible by the subordinate officers in such cases. Appropriate it would have been for the Revenue Minister to send respondents no's 5 and 6's complaint for enquiry to any officer who was either of the rank of the officer who had issued the certificate or any other officer of higher rank or status.

For all what has been said above, while upholding the order of the Revenue Minister, directing holding of enquiry into the complaint of respondents no. 5 and 6, it is directed that Deputy Commissioner, Jammu, shall hold the enquiry, as desired by the Revenue Minister, regarding genuineness, validity or otherwise of the Permanent Resident Certificates of the petitioners in the light of the complaint of respondents no. 5 and 6, after providing full opportunity to the petitioners and respondents no. 5 and 6 to participate in the enquiry by producing such material as they may like so to do to support their respective case. Deputy Commissioner, Jammu, shall complete the enquiry within a period of six months.

Parties through their learned counsel are directed to appear before the Deputy Commissioner on 15th of May, 2007.

Writ petition is accordingly disposed of.

(J .P. Singh)
Judge

Jammu
27. 04. 2007
Anil Raina,PS